IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9142 of 1997
With
CIVIL APPLICATION No. 2250 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHAMBHALIA MUNICIPALITY - Petitioner(s)
Versus
GIRISHCHANDRA MURMU OR HIS SUCCESSOR IN OFFICE & 2 - Respondent(s)

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Appearance :
MR RC KAKKAD for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1, 3,
MR BHASKAR P. TANNA with MR NIKHIL S. KARIEL for TANNA ASSOCIATES for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/01/2007

ORAL JUDGMENT

1. The short facts of the case are that the

petitioner, which is now Municipality and formerly Nagarpalika (hereinafter referred to as “the petitioner”) had applied to the D.D.O., to hold auction for sale of the land forming part of Gamtal. Thereafter, the D.D.O. granted permission to the petitioner to hold auction for sale of Gamtal land. The respondent No.2, who was desirous to get the land made application to the petitioner for allotment of the land admeasuring about 3000 sq. yards. On 29.1.1982, the then elected body of the petitioner passed a resolution for allotment of the land, but not the same land, which was applied for by the respondent No.2. Ultimately, on 17.4.1986, the District Panchayat expressed the view that proper proposal may be forwarded for allotment of the land to respondent No.2. Thereafter, on 7.7.1994, the resolution was passed by the then elected body of the petitioner for allotment of the land at a concessional rate and since the prior permission of the State Government was required, it was resolved to move appropriate proposal to the State Government. On 1.11.1995,

the State Government passed the order, granting permission under Section 65(2) of the Gujarat Municipalities Act (hereinafter referred to as “the Act”) for allotment of the land.

2. Thereafter, on 4.1.1996, it was resolved by the then elected body of the petitioner that the land is now required for the public purpose by the Municipality namely; for construction of community hall, etc. and, therefore, the land may not be sold to respondent No.2. It appears that thereafter, there were certain correspondences between the Municipality and the District Collector for allotment of the land to respondent No.2, in which the District Collector insisted for allotment, whereas the Municipality insisted that the land is now not to be allotted since it is required for public purpose and at that stage, ultimately on 6.12.1997 the District Collector passed the order directing the Municipality to hand over the possession of the land to respondent No.2 Institution. It is under these circumstances the petitioner has approached this Court by preferring the present

petition for challenging the said oder of the District Collector directing the Municipality to hand over the possession of the land in question to respondent No.2. It may be recorded that pending the aforesaid proceedings the petitioner, who was formerly Nagarpalika is converted as Municipality under the provisions of Gujarat Municipalities Act.

3. I have heard Mr.Kakkad, learned Counsel appearing for the petitioner, Mr.Nikhil Kariel, learned Counsel for respondent No.2 and Mr.Chhaya, learned AGP for respondents No.1 and 3.

4. It may be recorded that Civil Application No.22500 of 2006 was preferred by the petitioner for amendment contending, inter alia, that now the land is required for fire station being one of the public purposes of the Municipality for the residents of Khambhalia and it is contended that no other land is available, over which fire station can be established by the Municipality.

5. I would have considered the larger question on the aspects as to whether the sanctioning

authority can insist for allotment of the land as against the desire of the Municipality, which is the owner of the property and another question as to whether the Municipality can be permitted to back out from its own resolution for allotment of the land or not in view of subsequent change in the circumstances for requirement of the land for public purpose, however, the learned Counsel appearing for the petitioner as well as for respondent No.2 have declared before the Court that if the matter is referred to the District Collector for examining such aspects, their respective clients are agreeable for such purpose. Therefore, I find that no detailed reasons are required in this regard, but suffice it to observe that whether the subsequent change of the stand of the Municipality for not agreeing to allot the land to respondent No.2 on account of the requirement for public purpose, may be for establishing the fire station or for community hall, is genuine or not, can appropriately be examined by the District Collector in exercise of his

supervisory jurisdiction. Further, it deserves to be recorded that if the land is genuinely required for public purpose by the Municipality itself, the Municipality may be justified in asserting for retention of the property, but considering the facts and circumstances that earlier the Municipality had passed the resolution for allotment of the land and it was resolved to be allotted and the sanction was granted by the State Government, in the event the land in question is required for public purpose and cannot be parted with by the Municipality, the District Collector can also examine the matter after getting the views of the Municipality for allotment of some other land of the Municipality to respondent No.2, of course, as per the prevailing policy of the Government and in accordance with law.

6. Under the above circumstances, I find that the following directions shall meet with the ends of justice:-

(a) The District Collector, Jamnagar – respondent No.1 herein, shall examine the

matter after giving opportunity of hearing to the petitioner Municipality as well as to respondent No.2 Institution and shall decide as to whether;

(i) the land is genuinely required by the Municipality for community hall or for fire station or not;

(ii) if the land is genuinely required by the Municipality for public purpose for itself, the order for insisting the entrustment of the possession would not survive since the land itself is required for public purpose by the Municipality;

(iii) In the event the District Collector finds that the land is not genuinely required for public purpose, it would be open for him to pass appropriate orders. It hardly requires to clarify that either party shall be at liberty to challenge the said order in case it is aggrieved, before the appropriate forum.

(iv) It is further clarified that in the event the District Collector finds that the land is genuinely required for community hall or fire station and as a result thereof the land in question cannot be allotted to respondent No.2, it would be open to respondent No.2 to move the Municipality or the District Collector, as the case may be, for allotment of some other land of the Municipality and if such an application is made, the District Collector shall also examine the said aspect, after giving opportunity of hearing to the Municipality and shall pass the appropriate orders.

(v) All the aforesaid exercise shall be completed as early as possible preferably within a period of four months from the date of receipt of the order of this Court. Until the aforesaid exercise is completed and

appropriate orders are passed by the District Collector, the interim relief granted earlier shall continue to operate.

7. The petition is disposed of in terms of the aforesaid directions. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

8. In view of the order passed by this Court in the main Special Civil Application, no further orders are required to be passed in the Civil Application No.2250 of 2006. Hence, the Civil Application shall stand disposed of accordingly.

11.1.2007 **(Jayant Patel, J.)**

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